

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES A. BOYD,

V.

RICHARD MORGAN, et al.,

## Defendants.

No. C09-1784 BHS/KLS

**ORDER DIRECTING PLAINTIFF TO  
SERVE COMPLAINT AND SUMMONS**

This civil rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. On December 22, 2009, Plaintiff James A. Boyd filed a civil rights complaint and paid the filing fee of \$350.00 (Receipt SEA 31321). Dkt. 5. Because Mr. Boyd is not proceeding *informa pauperis* in this matter, it is his obligation to serve copies of the Summons and Complaint upon the named defendants.

Plaintiff is now directed to Rule 4 of the Federal Rules of Civil Procedure, which sets forth the rules and procedure for service of the Summons and Complaint.<sup>1</sup> Pursuant to Rule 4(m), Plaintiff must serve copies of the Summons and Complaint upon each of the named Defendants within 120 days after the filing of the Complaint. Unless the Plaintiff can show good cause for his failure to serve, the Court shall dismiss the action without prejudice as to each defendant not served or shall extend the time for service. Fed R Civ P. 4(m). The court

<sup>1</sup> Plaintiff's attempt to serve the defendants by mail is not sufficient service under Rule 4. See Dkt. 12.

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1 **ORDERS** that the 120 days for service shall run from the date of this Order. Plaintiff is further  
2 advised as follows:

3       **Filing and Service by Parties, Generally.** All original documents and papers submitted  
4 for consideration by the Court in this case, are to be filed with the Clerk of this Court. The  
5 originals of all such papers shall indicate in the upper right-hand corner the name of the  
6 Magistrate Judge to whom the copies are to be delivered. The papers shall be accompanied by  
7 proof that such documents have been served upon counsel for the opposing party (or upon any  
8 party acting pro se). The proof shall show the day and manner of service and may be written  
9 acknowledgment of service, by certificate of a member of the bar of this court, or by affidavit of  
10 the person who served the papers.

12       **Motions.** Any request for Court action shall be set forth in a motion, properly filed and  
13 served. The motion shall include in its caption (immediately below the title of the motion) a  
14 designation of the Friday upon which the motion is to be noted upon the court's calendar. That  
15 date shall be the third Friday following filing of the motion (fourth Friday for Motions for  
16 Summary Judgment). All briefs and affidavits in opposition to any motion shall be filed and  
17 served not later than 4:30 p.m. on the Monday immediately preceding the Friday appointed for  
18 consideration of the motion. If a party fails to file and serve timely opposition to a motion, the  
19 court may deem any opposition to be without merit. The party making the motion may file, not  
20 later than 4:30 p.m. on the Friday designated for consideration of the motion, a response to the  
21 opposing party's briefs and affidavits.

24       **Motions for Summary Judgment.** If one of the parties files a motion for summary  
25 judgment pursuant to Federal Rules of Civil Procedure 56, the opposing party should acquaint  
26 him/herself with Rule 56. Rule 56 requires a nonmoving party to submit affidavits or other

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1 evidence in opposition to a motion for summary judgment if the moving party has shown the  
2 absence of issues of material fact and an entitlement to judgment as a matter of law. A  
3 nonmoving party may not rest upon the mere allegations or denials of prior pleadings. Rather,  
4 successful opposition to a motion for summary judgment requires the nonmoving party to set  
5 forth, through affidavits or other evidence, specific facts showing a genuine issue for trial.  
6 Failure by the nonmoving party to oppose a summary judgment motion or to present counter  
7 evidence could result in the court accepting the moving party's evidence as the truth, and  
8 entering final judgment in favor of the moving party without a full trial. *Rand v. Rowland*, 113  
9 F.3d 1520 (9th Cir. 1997).

11 **Direct Communications with District Judge or Magistrate Judge.** No direct  
12 communication is to take place with the District Judge or Magistrate Judge with regard to this  
13 case. All relevant information and papers are to be directed to the Clerk.  
14

15 **Clerk's Action.** The Clerk is directed to send a copy of this Order and of the General  
16 Order issued by the Magistrate Judges to Plaintiff. The Clerk is also directed to issue a summons  
17 for each named Defendant and to send it to Plaintiff. The Clerk is also directed to return to  
18 Plaintiff the service copies and summonses submitted by Plaintiff with his Complaint.

19 Accordingly, it is **ORDERED**:

20 (1) Plaintiff is directed to serve the summons and complaint on the named defendants  
21 within 120 days of the date of this Order.  
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1 (2) The Clerk is directed to issue and send a summons for each named Defendant to  
2 Plaintiff. The Clerk is further directed to send to Plaintiff copies of this Order, General  
3 Order, and the service copies and summonses previously submitted by Plaintiff.

4 (3) The Clerk is also directed to note the 120 day deadline on the court's docket.  
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7 **DATED** this 2nd day of April, 2010.  
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9 Karen L. Strombom  
10 United States Magistrate Judge  
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